

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**No. 16-cv-0671 RB/SMV
12-cr-2653 RB**

GILBERT CONTRERAS,

Defendant.

**ORDER DENYING THE UNITED STATES' MOTION TO STAY
AND DIRECTING THE UNITED STATES TO RESPOND**

THIS MATTER is before the Court Defendant's Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 [CV Doc. 1; CR Doc. 34], filed June 24, 2016, and on the United States' Motion for Stay of Proceedings Pending the Supreme Court's Decision in *United States v. Beckles* [CV Doc. 3; CR Doc. 37], filed July 7, 2016. The Court will deny the United States' Motion to Stay and order it to respond to Defendant's Motion.

Defendant moves to vacate his sentence under § 2255. He asserts that he was sentenced under the residual clause of U.S.S.G. § 4B1.2. He urges the Court to extend the logic of *Johnson v. United States*, 135 S. Ct. 2551 (2015), to the residual clause of the § 4B1.2 and, thereby, find that he should be resentenced. [CV Doc. 1; CR Doc. 34].

The government has not responded to § 2255 Motion. Instead, it moves to stay the proceedings pending the Supreme Court's decision in *Beckles*, which would control the outcome of this case. [CV Doc. 3; CR Doc. 37]. Defendant opposes a stay because *Beckles* may not be decided before his current release date of October 6, 2018. Moreover, Defendant argues that if he

is resentenced, he likely would be eligible for immediate release. [CV Doc. 4] at 2; [CR Doc. 38] at 2. The government filed no reply to its Motion to Stay; it does not dispute that a stay would prejudice Defendant.

Under rule 4(b) of the Rules Governing Section 2255 Cases, and because a stay is not appropriate, the Court will direct the United States to respond to Defendant's Motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States' Motion for Stay of Proceedings Pending the Supreme Court's Decision in *United States v. Beckles* [CV Doc. 3; CR Doc. 37] is **DENIED**.

IT IS FURTHER ORDERED that the Clerk is directed to forward to the United States of America a copy of Defendant's Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 and supporting papers and exhibits, if any, together with a copy of this Order.

IT IS FURTHER ORDERED that the United States respond to Defendant's § 2255 motion **no later than October 11, 2016**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge